

SENATE BILL 2791

By Herron

AN ACT to amend the Tennessee Consumer Protection Act of 1977, Title 47, Chapter 18, relative to consumer protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding sections two through six of this act as a new part.

SECTION 2. This part shall be known, and may be cited, as the "Prohibition Against Misleading and Deceptive Mailings Act".

SECTION 3. It shall be unlawful for any person, directly or indirectly, to:

(1) Cause likelihood of confusion by creating the appearance that a mailing, solicitation, promotion or offer has been sent to a consumer or other person through a special or expedited type of service offered by the United States Postal Service or an express courier service, if such is not the case.

(2) Use or employ language, symbols, logos, titles, names, representations or statements in any advertisement, solicitation, promotion, offer or the like that represent or imply that a mailing, solicitation, promotion or offer has been sent through a special or expedited type of service offered by the United States Postal Service or an express courier service, when such is not the case. Without limiting the scope of this provision,

using envelopes that resemble the United States Postal Service express mail envelopes, priority mail envelopes or other express courier services envelopes, when the mailing is not sent with such special handling, is prohibited by this section.

(3) Cause likelihood of confusion or the appearance that a mailing, solicitation, promotion or offer has been sent to a consumer or other person through return receipt requested, certified or registered mail service of the United States Postal Service, if such is not the case.

(4) Use or employ language, symbols, logos, names, titles, representations or statements in any advertisement, solicitation, promotion, offer or the like that represent or imply that a mailing, solicitation, promotion or offer has been sent to a consumer or other person through return receipt requested, certified or registered mail service of the United States Postal Service, when such is not the case.

(5) Use or employ language, symbols, logos, titles, names, representations or statements in any advertisement, solicitation, promotion, offer or the like that include a warning, notice or statement that represents or implies that the offer will be treated in a unique fashion by the United States Postal Service or other courier service, if such is not the case. Without limiting the scope of this provision, the use of a warning, notice or similar statement indicating that the item may only be delivered to a particular person, when no such requirement is imposed by the Postal Service or courier service, is prohibited by this section.

(6) Violate any United States Postal Service law, regulation or rule regarding deceptive, misleading or unfair mailing acts or practices.

SECTION 4. In any action commenced by the attorney general and reporter, the court shall award a civil penalty to the state in an amount not to exceed one thousand dollars (\$1,000.00) for each violation of this act. The court shall calculate each violation in a liberal manner to strongly discourage persons from victimizing consumers. This part shall be

construed to include consumers or persons within or outside the state of Tennessee if the person alleged to have violated the part is located in whole or in part within the state of Tennessee.

SECTION 5. (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, Tennessee Code Annotated, Section 47-18-101 et seq.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part. The provisions of the Tennessee Consumer Protection Act shall apply to actions under this part unless such application is inconsistent with the express provisions of this part.

(c) If the attorney general and reporter has reason to believe that any person has violated any provision of this act, the attorney general and reporter may institute a proceeding under this chapter.

SECTION 6. The powers and remedies provided in this part shall be cumulative and supplementary to all powers and remedies otherwise provided by law. The invocation of one power or remedy shall not be construed as excluding or prohibiting the use of any other remedy. Without limiting the scope of this section, the remedies, including the civil penalties recoverable by the state of Tennessee under this part, are supplemental and cumulative to any other available remedies, civil penalties and relief available under other laws, regulations and rules, including, but not limited to, those available pursuant to Tennessee Code Annotated, Sections 47-18-108 and 47-18-109.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are to be declared to be severable.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.